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Attorneys for Defendant and Counter Claimant Acacia Communications, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**ViaSat, Inc.,**

*a Delaware corporation,*

Plaintiff

and Counter Defendant,

v.

**Acacia Communications, Inc.,**

*a Delaware corporation,*

Defendant

and Counter Claimant

Case No. 3:16-cv-00463-BEN-JMA

**ACACIA COMMUNICATIONS,  
INC.'S MOTION TO FILE UNDER  
SEAL DOCUMENTS ASSOCIATED  
WITH ITS MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
REGARDING DAMAGES**

Judge: Hon. Roger T. Benitez

Mag. Judge: Hon. Jan M. Adler

Date: February 20, 2018

Time: 10:30 a.m.

Courtroom: 5A

Pursuant to Federal Rule of Civil Procedure 26(c), Local Rule 79.2(c), ECF Administrative Policies and Procedures 2(j), the Stipulated Protective Order § 1 (Dkt. No. 29), and Magistrate Judge Adler's Chamber Rules at 3, defendant and counter claimant Acacia Communications, Inc. ("Acacia") submits this motion to file under seal portions of the Memorandum of Points and Authorities in Support of Acacia Communication, Inc.'s Motion for Partial Summary Judgment Regarding Damages ("Acacia's Memorandum") and certain of the exhibits attached to the Declaration of Stuart V. C. Duncan Smith in support of that motion.

### ARGUMENT

Certain limited portions of Acacia's Memorandum and certain of the exhibits attached to the Declaration of Stuart V. C. Duncan Smith in support of that motion contain confidential information that one or both of the parties have designated as Confidential or Highly Confidential – Attorneys' Eyes Only under the Stipulated Protective Order (Dkt. No. 29), disclosure of which would harm the competitive standing of the parties and could be used to the parties' competitive disadvantage outside of this case.

Acacia seeks to seal the following documents:

- a. Portions of Acacia's Memorandum, which contains information that ViaSat and Acacia have designated as Highly Confidential – Attorneys' Eyes Only. These portions contain confidential business and financial information of both ViaSat and Acacia regarding product sales, royalty and other payments, contractual obligations, and the value of the technology and products at issue in this case.
- b. Exhibit 2 attached thereto, which is a copy of the Expert Report of Stephen D. Prowse, Ph.D., CFA, dated October 27, 2017, with Corrected Designation dated October 30, 2017, and contains information that ViaSat has designated as Highly Confidential – Attorneys' Eyes Only and information that is Third Party Highly Confidential. Exhibit 2 contains

1 confidential business and financial information from both parties regarding  
2 product sales, royalty and other payments, and the value of the technology  
3 and products at issue in this case. It also cites to documents produced by  
4 third parties in the course of this litigation.

- 5 c. Exhibit 3 attached thereto, which is a copy of the Nondisclosure Agreement  
6 between ViaSat and Acacia dated June 10, 2009, attached to an email from  
7 Ted Gammell dated June 11, 2009, entered as Deposition Exhibit No. 85,  
8 and contains information that ViaSat has designated as Highly Confidential –  
9 Attorneys’ Eyes Only. Exhibit 3 is an agreement which contains confidential  
10 information related to the parties’ business relationship and business  
11 practices with respect to confidential information.
- 12 d. Exhibit 5 attached thereto, which is a copy of Cord, Aurora, Gemini, and  
13 Polo Payments, entered as Deposition Exhibit No. 101 with attached letter  
14 from Amy M. Bailey on October 25, 2017 resending the document with a  
15 corrected confidentiality designation, and contains information that ViaSat  
16 has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 5  
17 contains confidential financial information related to payments to ViaSat for  
18 the Cord project and from third parties related to various other projects.
- 19 e. Exhibit 6 attached thereto, which is a copy of an email from Russell Fuerst,  
20 dated May 25, 2009, entered as Deposition Exhibit No. 347, and contains  
21 information that Acacia has designated as Highly Confidential – Attorneys’  
22 Eyes Only. Exhibit 6 is a Rough Order of Magnitude Schedule, Budgetary,  
23 and Resource Estimate provided by ViaSat and contains business, financial,  
24 and technical information that ViaSat identified as confidential.
- 25 f. Exhibit 7 attached thereto, which is a copy of excerpts of the condensed  
26 transcript of the November 30, 2017 deposition of Stephen D. Prowse, and  
27 contains information that ViaSat has designated as Highly Confidential –  
28 Attorneys’ Eyes Only. Exhibit 7 contains discussion of the Exhibit 6 Rough

1 Order of Magnitude Schedule, Budgetary, and Resource Estimate as well as  
2 the business and financial information contained therein.

- 3 g. Exhibit 8 attached thereto, which is a copy of the Rebuttal Expert Report  
4 Regarding Damages of Brent K. Bersin, dated November 21, 2017, and  
5 contains information that Acacia has designated as Highly Confidential –  
6 Attorneys’ Eyes Only. Exhibit 8 contains confidential business, financial,  
7 and technical information from both parties related to sales of the accused  
8 products, royalty and other payments, and the value of the technology and  
9 products at issue in this case.
- 10 h. Exhibit 9 attached thereto, which is a copy of an email from Christian  
11 Rasmussen, dated September 10, 2013, entered as Deposition Exhibit No.  
12 675, and contains information that Acacia has designated as Highly  
13 Confidential – Attorneys’ Eyes Only. Exhibit 9 is an email discussing the  
14 parties’ financial information and prospective technical work and business  
15 negotiations.
- 16 i. Exhibit 10 attached thereto, which is copy of ViaSat’s Second Set of  
17 Supplemental Responses to Acacia’s Interrogatory Nos. 23 and 24, dated  
18 September 6, 2017, and contains information that ViaSat has designated as  
19 Highly Confidential – Attorneys’ Eyes Only. Exhibit 10 contains  
20 information that ViaSat identified as confidential information related to  
21 ViaSat’s purported development and disclosure of the technology included  
22 in its alleged trade secrets.
- 23 j. Exhibit 11 attached thereto, which is a copy of Acacia Communications,  
24 Product Family and Product Gross Margin Summary for the Quarter Ending  
25 June 2017, and contains information that Acacia has designated as Highly  
26 Confidential – Attorneys’ Eyes Only. Exhibit 11 contains detailed  
27 information about Acacia’s product revenue, costs, and margin for its  
28 various products and product families.

1 Acacia will electronically file a public version of Acacia's Memorandum with the  
 2 confidential information redacted. Therefore, this request is narrowly tailored to  
 3 protect only the information that is confidential.

4 While the public generally enjoys the right of access to court records, the  
 5 public's right to access to court records "is not absolute," and documents are properly  
 6 filed under seal where disclosure would harm a party by forcing it to disclose trade  
 7 secrets or other valuable confidential proprietary business information. *See, e.g., Nixon*  
 8 *v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *In re Elec. Arts, Inc.*, 298 F. App'x  
 9 568, 569-70 (9th Cir. 2008).

10 "Where a party shows that its documents contain sources of business  
 11 information that might harm its competitive standing, the need for public access to the  
 12 records is lessened." *Algarin v. Maybelline, LLC*, No. 12-3000, 2014 WL690410, at \*3  
 13 (S.D. Cal. Feb. 21, 2014). Courts must ensure that their records are not used "as  
 14 sources of business information that might harm a litigant's competitive standing."  
 15 *Nixon*, 435 U.S. at 598; *see also Bauer Bros. LLC v. Nike, Inc.*, No. 09500, 2012  
 16 WL1899838, at \*3-4 (S.D. Cal. May 24, 2012) (granting motion to seal non-public  
 17 financial data); *Davis v. Soc. Serv. Coordinators, Inc.*, No. 10-023 72, 2012 WL 1940677, at  
 18 \*3 (E.D. Cal. May 29, 2012) (noting that "[g]ood cause to seal is generally found where  
 19 the disclosure of proprietary information could cause a party competitive injury").

20 Good cause to file under seal exists because the information Acacia seeks to seal  
 21 has been identified as confidential by Acacia, ViaSat, and third parties. Publicly filing  
 22 the information would prejudice Acacia and ViaSat by revealing technical and financial  
 23 information that could be used for competitive advantage outside of this case.  
 24 Therefore, there is good cause to seal this information.

### 25 CONCLUSION

26 For the foregoing reasons, Acacia respectfully requests that the Court seal the  
 27 portions of Acacia's Memorandum and the documents listed above. A Proposed  
 28

1 Order will be emailed to efile\_benitez@casd.uscourts.gov and  
2 efile\_adler@casd.uscourts.gov.  
3  
4

5 Dated: January 17, 2018

Respectfully Submitted,

6 WOLF, GREENFIELD & SACKS, P.C.  
7

8 By: /s/ Michael A. Albert

Michael A. Albert

9 Hunter D. Keeton

10 Stuart V. C. Duncan Smith

11 Attorneys for Defendant and Counter  
12 Claimant Acacia Communications, Inc.  
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**CERTIFICATE OF SERVICE**

I certify that today I served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that am causing the foregoing document to be served by electronic means via email upon counsel for ViaSat, Inc., per the agreement of counsel.

Date: January 17, 2018

/s/ Michael A. Albert

Michael A. Albert